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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE,

Plaintiff,

v.

JAMES UPDIKE, JOSEPH
MATALONI, et al.,

Defendants.

No. 1: CV-01-1064

(Judge Kane)

(Magistrate Judge Smyser)

FILED
HARRISBURG

FEB 08 2002

MARY E. D'ANDREA, CLERK
Per JES
DEPUTY CLERK

CORRECTIONS DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT

Corrections Defendants, Joseph Mataloni, Edward O'Brien and Dale Hazlak hereby move this Court to dismiss the complaint for failure to state a claim upon which relief may be granted under Federal Rule of Civil Procedure (12)(b)(6), for failure to exhaust administrative remedies under 42 U.S.C. §1997e(a), and for such other grounds as set forth in the supporting brief.

WHEREFORE, Corrections Defendants respectfully request that the complaint be dismissed with prejudice.

Respectfully submitted,

Marsha M. Davis

By: Marsha M. Davis, Assistant Counsel
Attorney I.D. No. 28018
PA Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: 2/8/02

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PHAN HUE,

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CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of Corrections Defendants' Motion to Dismiss Plaintiff's Complaint in the above-referenced matter.

Service by first-class mail Addressed as follows:

Phan Hue DY-0557
SCI-Retreat
660 State Route 11
Hunlock Creek, PA 18621


Cathleen E. Phillips
Clerk Typist 2

PA Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: February 8, 2002